DERAMAN BIN DIN & ORS. v. IBRAHIM BIN MAMAT

[O.C.J. (Abdul Razak J.) January 11, 1975]
[Kota Bharu — Civil Suit No. 28 of 1972]

Land Law — Land registered under possessory title in name of defendant — Whether plaintiff can apply to High Court to claim that he is entitled to land — Kelantan Land Settlement Ordinance, 1955, s. 10(1)(a).

Interpretation of Statutes — Where literal interpretation would defeat intention of legislature — Object and reasons of Bill — Cannot defeat meaning of words in statute — Kelantan Land Settlement Ordinance, 1955, s. 10(1)(a).

In this case there had been a Land Scheme Enquiry and the land had been registered in the name of the defendant under a possessory title. The plaintiff did not seek to have the order of the District Officer quashed on the ground of any breach of the rules of natural justice or of lack of jurisdiction on the part of the District Officer. But they brought an action purportedly under section 10(1)(a) of the Kelantan Land Settlement Ordinance claiming that they were entitled to a share in the land.

Held: (1) under the Kelantan Land Settlement Ordinance, the function of the District Officer is not only to decide who is in possession but also who is entitled to possession and as in this case the District Officer had made a valid order, the plaintiffs could not bring the action under section 10(1) of the Ordinance and the action must therefore be dismissed;

(2) section 10 of the Kelantan Land Settlement Ordinance only allows the court to hear the party or parties if they were not before the Land Enquiry before.

Cases referred to:-

(1) *Luke* v. *Inland Revenue Commissioners* [1963] A.C. 577.

(2) *Artemion* v. *Procopiou* [1966] 1 Q.B. 888.

(3) *In re Maryon-Wilson's Will Trusts, Blofield* v. *St. Hill* [1968] 1 Ch. 282.

(4) *Mat'ail* v. *Mek* [1961] M.L.J. 15.

(5) *Fatimah* v. *Wok* [1964] M.L.J. 318.

CIVIL SUIT.

A. Gomez for the plantiff.

Defendant in person.

Abdul Razak J.: This is an action purportedly made under section 10(1)(a) of the Kelantan Land Settlement Ordinance which reads as follows:

"(1) Where a possessory title has been registered —

(a) no suit, action or proceeding under the Code or otherwise may be brought by any person to establish any claim to ownership of or interest in the land if such claim existed prior to the date of the registration of possessory title unless such suit, action or proceeding is commenced before the expiration of three years from the date of such registration."

The defendant was unrepresented. The plaintiffs claim that they are entitled to 5/10 share of the undivided share of the Lot No. 1605, Mukim Bunohan. They say that the land was originally registered under the name of their father Din bin Salleh since deceased. The defendant denies the claim and said that he bought the land from the said Din bin Salleh. He contends that at the Land Scheme Enquiry and on an appeal made against it on the 7th January and 10th March, 1970 respectively the land was registered in his name under a possessory title.

Before me the plaintiffs did not seek to show either that they did not get a proper hearing at the Settlement Scheme Enquiry or that there was any breach of the rules of natural justice or that the collector had acted *ultra vires*, nor had they alleged that the Land Officer had no jurisdiction or had acted in excess of his jurisdiction for which *certiorari* would lie. They had not indicated that they had no notice of the Land Enquiry and therefore had no opportunity to present their case. They had not appealed to the court from the decision of the District Officer which they were empowered to do under section 16(1) of the said Ordinance. They nevertheless claim that under the said Ordinance they were entitled to bring an action under section 10 to determine afresh their rights although it is between the same parties and in respect of the same issue. They contend that under the statute, the District Officer is only entitled to decide the fact of possession and he is not entitled to find who has the right to possession which they say is for the court to decide. In my view section 10 does not allow them that privilege. It only allows the courts to hear the party or parties if they were not before the Land Enquiry before. It may be said that words of section 10 are plain and clear and, therefore, following the canon of construction, must be given their plain and clear meaning. Indeed, that is so but as *Maxwell* on Interpretation of Statutes, 12th Edition, at page 105 says:

"Sometimes, indeed, the meaning of words is so plain that effect must be given to them regardless of the consequences, but more often — as the cases discussed in the following pages show — a construction is arrived at with reference to the consequences which must follow from it."

It is a corollary of this canon that a statute must be read as a whole. *Halsbury's Laws of England*, 3rd Edition, Volume 36 at page 395 says:

"A statute should be construed as a whole so as, so far as possible, to avoid any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute. The literal meaning of a particular section may in this way be extended or restricted by reference to other sections and to the general purview of the statute."

It seems to me the general purview of the statute is to decide finally and completely in an enquiry who is entitled to be registered as proprietor of land by calling upon all claimants registered or otherwise to state their claims before the Land Tribunal. This is clearly explicit in the words of section 3 itself. Section 3(1) reads:

"The Ruler in Council may by notification in the *Gazette* declare any area within the State to be a Settlement Area and shall in such notification call upon every claimant to appear at such time and at such place as the District Officer may in the manner prescribed direct and to submit his claim."

To say therefore that the Ordinance allows a rehearing is to defeat this very object. Lord Reid says in *Luke* v. *Inland Revenue Commissioners*(1) where:

"To apply the words literally is to defeat the obvious intention of the legislation and to produce a wholly unreasonable result. .... We must do some violence to the words. This is not a new problem, though our standard of drafting is such that it rarely emerges."

If it is said that the object of the statute is to cast upon the Land Officers to decide on the question of who is in possession merely and to leave the question of legal title to the courts then this is clearly against the expressed provision of the statute itself as spelled out in section 5. Section 5(1) reads:

"The District Officer shall at a public enquiry ascertain who is in possession of land, who is the registered proprietor, *who is entitled to be registered as proprietor,* (the italics are mine) whether any person has a registrable interest therein, and the extent of the land over which any interest is exercisable."

It seems clear then that the District Officer's function is not only to decide (for example in section 8) who is in possession but who is entitled to possession. If there is any doubt about this construction then section 8 itself makes that quite clear. Sub-section (2) of section 8 says:

"Whenever the District Officer is satisfied that the person in possession entered into possession as tenant, chargee or otherwise than as owner, by leave or licence of or on behalf of *any person not being the proprietor who claims to be entitled* to such land or any interest therein he shall make a finding to that effect and, in the manner prescribed, make an order, which shall be presented to the Land Registrar." (the italics are mine)

Sub-section (3) reads:

"Upon receipt of such order the Land Registrar shall furnish the person in possession or, *where appropriate, the person under whom or by whose licence the person in possession entered into possession, with the* appropriate document of possessory title." (the italics are mine)

It is evident that while in section 8(1) it is the person in actual possession who gets the possessory title in section 8(2) it is not so. A tenant although in possession does not get title but the person under whom he holds the land (e.g. the buyer who claims to have bought the land) gets it, although he may not be in actual possession. In other words in section 8 a situation may arise where the officer has to decide who has 'constructive' possession merely which although is not 'actual' is nevertheless legal possession. And yet this is precisely what and how counsel argued the court is supposed to decide. It is urged that the enquiry officer does not confer legal title but the court does. But noticeably again this is not so. The officer confers possessory title which despite the fact that it becomes indefeasible only after three years is as good as any other title (section 10(2)). The holder is deemed owner as any other title holder (section 10(1)(e)).

That being the case then is it conceivable that the Legislature had provided that both the court and the administrative body should have jurisdiction when convenience, expense and reason compels us to say that only one should have it. The injustice, inconvenience and absurdity can be seen in this way. By its very nature, proceedings before the Land Officer would involve the young, old and dying alike. They would involve the poor and the illiterate. They are the ones who would be inclined to do things by word of mouth. Transactions would take place sometimes 50 or 60 years ago when they were young. It is naturally too much to expect them to say what precisely had happened then. It is certainly going to make their life and time even worse if after having gone through the drill once before at the Land Enquiry they would have to be subjected once again to the same and probably greater ordeal before the court. And bearing in mind that they are compelled to do so only by the law makes one shudder to think whether it is really the intention of the Legislature that they should, without their fault, be made to suffer such unnecessary strain and inconvenience. In the case before me, the defendant was about 90 years old and sickly who had to be carried in court. In the natural course of things, if he is still alive, this may not be his last appearance in court. But there are no other means by which he could dispense with himself; he was directly involved. The unreasonableness of it speaks for itself and makes one wonder whether this is not against the presumed intention of Parliament. As Danckwerts L.J. in *Artemiou* v. *Procopiou*[2] says:

"An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available."

This is however just one of the many cases that have already cluttered the courts and therefore we may not have seen the last of the unfairness caused to the Kampong people. This seems inevitable enough because the court has been transformed into the Land Scheme Enquiry itself.

If it is said that the Land Officer is not to decide on the legal title then it would follow that all the titles they have thus far conferred and which have matured would be null and void and of no effect. It would mean that every proceeding which confers possessory title (which must be legal title) will have to be followed with similar proceedings before the court with all the consequent expense, to give it the necessary validity and effect. That would, I must humbly say, create an indeed absurd situation. It is a construction which I must respectfully say go against commonsense and equity. As Ungoed-Thomas J. in *In re Maryon-Wilson's Will Trusts, Blofield* v. *St. Hill*[3] says:

"The court will not ascribe to Parliament an unjust intention, but the court cannot override Parliament and its statutes. If the court is to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for common sense and justice."

Reliance has been placed on the fact that the concurrent jurisdiction of the court under section 10 is merely in keeping with the object and reason of the Bill. I was referred to the case of *Mat'ail* v. *Mek*[4] for this purpose. It is difficult to see how the object and reason can override the expressed words of the statute.

"The dominant purpose in construing a statute is to ascertain the intention of the legislature as so expressed. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself." (*Halsbury's* Laws of England, 3rd Edition, Vol. 36 p. 387 para. 578).

By inference therefore the object and reasons of a Bill cannot act to defeat the meaning of the words of the statute itself though it could help to explain its meaning. If there is a conflict between the object and reason and the substantive provision then it follows the substantive provision must prevail. But there is a much more fundamental reason for the objection. *Halsbury's* at page 410 states:

"Even when words in a statute are so ambiguous that they may be construed in more than one sense, regard may not be had to the bill by which it was introduced."

Thus said I think the less is said about the object and reason in our case as an aid to construction the better. Indeed, it is because of the utterly misleading summary which the Bill has sought to give to the

meaning of the statute, with particular reference to section 10, that great confusion and difficulty had been caused to its meaning. The long title to the statute, however, plays an important part in the aid to construction (*Halsbury's* page 369 paragraph 541). The long title to the Ordinance reads:

"An Ordinance to provide for revision of registers, recording of interests in land, settlement of claims, determination of owners, possessory title to land, and issue of documents of title to land, in areas from time to time declared in the State of Kelantan, and to amend the Land Enactment, 1938, of the State of Kelantan."

It stresses on the "*settlement of claims and the determination of owners*".

In my view if a person is aggrieved by the Land Officer's decision at the Scheme Enquiry then his avenue for redress is not to invoke section 10 but to file an appeal under section 16, otherwise it is impossible to see how section 10 could be made to operate without the one offending the other.

There is nothing new in saying that the Legislature intends that the determination of legal possession be done by administrative action. Section 95 of the Kelantan Land Enactment, 1938 is an example. The fact that the Kelantan Land Settlement Ordinance is to be read with it merely lends weight to that view. Section 95 has also a provision for claims to land by being in possession or otherwise; it is implicit. The Kelantan Land Enactment has been repealed but that does not alter the fact that it is still a legitimate aid in construing the Ordinance (see *Halsbury's* page 402 paragraph 607). Basically there is no difference between section 95 and the Ordinance except that in one case it is done at the instance of the claimant himself whereas in the other it is at the instance of the Government. The Trengganu Settlement Enactment Cap. 58 is *pari materia* with the Kelantan Settlement Ordinance. It also empowers administrative officers to make a finding of fact (see section 4) as to who is in possession and in as much as it confers title which becomes indefeasible after a time lapse, in its case 6 months, it could be equated to the land enquiry and the title it confers a 'possessory title' within the meaning of the Kelantan Land Settlement Ordinance. But except that there is the usual provision for the right of appeal there is finality in its proceedings and the parties could only bring an action in court who has not hitherto appeared before the collector. Section 14(2) reads:

"All decisions of the Collector, Land Court and High Court under section 10 shall be registered in the same manner and with the same effect, in that they shall on registration be binding and final only as between the parties to the dispute and as against previous claimants whose claims have been rejected, *and shall not prevent subsequent enquiry into an admission of other claims to the same land.*" (the italics are mine)

It may well be that that must have been the intention of the framers of the Kelantan Settlement Enactment also but for the manner in which the language was used by the draftsman in the latter. Otherwise section 10 would appear to be wholly repugnant to the rest of the Ordinance and as earlier mentioned this could hardly be the presumed intention of Parliament.

In arguing section 10, counsel referred me to Azmi J's (as he then was) Federal Court decision in *Fatimah* v. *Wok*[5] for his authority. In view of what I have already said I would spare further comment on the judgment. I can only say, with great respect, that the decision must have been intended only for the specific purpose of that case and was not meant to be a general principle for the construction of section 10(1).

There is one other point which I would like to dwell on. When the parties closed their case, it became necessary for me to consider whether in law the plaintiff had a good cause of action in the first place. The defendant was unrepresented. The implication of section 10 as I see it did not dawn upon me therefore until then. I was of the opinion that in view of section 10, the plaintiff's action could not succeed and the only thing left for me to do at that stage was to dismiss the claim. However, since I felt the objection on the point of law had not been raised by the defendant before at the outset it would not have been fair on the plaintiff for me to dismiss his action without giving him the opportunity to seek other remedies if he could, if there was any. In the circumstances it was felt that ordering the proceedings to be held *de novo* would enable him to achieve that purpose and therefore an order to that effect was accordingly made. On reconsidering the matter, I do not think it would have made much difference whether I had taken that step or not because ultimately the plaintiff's claim must depend on the construction of section 10(1) and since section 10(1) in my respectful view prevents him from bringing his action then the claim could have at that stage been properly dismissed.

Order accordingly.

Solicitors: *Mohamed Yaacob & Gomez.*